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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,045	03/22/2004	Ivan J. Naranjo	035695-003	2733
7590	03/18/2005			
Robert E. Krebs Thelen Reid & Priest LLP P.O. Box 640640 San Jose, CA 95164-0640				
			EXAMINER PELHAM, JOSEPH MOORE	
			ART UNIT 3742	PAPER NUMBER

DATE MAILED: 03/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

5N

Office Action Summary	Application No. 10/807,045	Applicant(s) NARANJO ET AL.	
	Examiner Joseph M Pelham	Art Unit 3742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 16-23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-9 and 27-29 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 10-13 and 24 is/are rejected.
- 7) ☒ Claim(s) 4, 14, 15, 25 and 26 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/13/04, 12/9/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Art Unit: 3742

Applicant's election without traverse of Group I, claims 1-15 and 24-29 in the reply filed on 2/23/05 is acknowledged.

Claim Rejections - 35 USC § 102

Claims 1-3, 5, 10-13, and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 5,584,231 (US'231).

Referring to Figs. 2-4, 8, 9, & 11-14A, and col. 5, lines 8-37, but noting Fig. 13 and col. 5, lines 39-52 especially, US'231 discloses a tortilla heating device with first radiant heating member 174, first tray 100 ("alternative embodiment," 5:38+), first compression grill 124 between tray 100 and first radiant heating member 174, means 68 to adjust the separation of the heating members, second radiant heating member 190 below tray 100, second tray 100 and compression grill 124 below second heating member 174, so that both sides of a tortilla are heated simultaneously.

Allowable Subject Matter

Claims 4, 14, 15, 25, and 26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 6-9 and 27-29 are allowed.

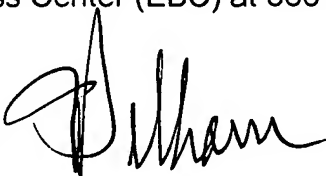
The following is a statement of reasons for the indication of allowable subject matter: The prior art does not disclose or suggest a tortilla/food heater including, in combination with the other recited limitations, a second heater radiating both upward to impinge on a first food tray and downward to impinge in a second food tray, heating both sides of a tortilla by thermal conduction, or raising and lowering the heating plates by means of a jack screw.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph M. Pelham whose telephone number is 571-272-4786. The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

3/14/05



**JOSEPH PELHAM
PRIMARY EXAMINER**